

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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December 03, 2018

Mr. Dale Andrew Baich  
Federal Public Defender's Office  
District of Arizona  
850 W. Adams Street  
Suite 201  
Phoenix, AZ 85007

No. 18-11546 In re: Joseph Garcia  
USDC No. 3:06-CV-2185

Dear Mr. Baich,

The district court transferred the movant's second or successive 28 U.S.C. § 2254 motion to this court to determine whether to allow successive action. I advise you of the following matters, see *In re Tony Epps*, 127 F.3d 364 (5th Cir. 1997).

Under 28 U.S.C. § 2244(b)(3) you must first receive this court's permission before you can file such an action in district court.

You must file a motion for authorization to proceed in the district court, and to send the documentation below. The motion may not exceed 13,000 words pursuant to FED. R. APP. P. 32(a)(7). Please use the case number shown above in your motion.

If you wish to file a second or successive § 2254 petition in the district court, you must make a prima facie showing that the movant satisfies either of the two conditions found in 28 U.S.C. § 2244(b)(2):

- A. that the movant's claim relies on a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable; **or**,
- B. the factual predicate for the movant's claim could not have been discovered previously through the exercise of due diligence, **and** the facts underlying the movant's claim, if proven by clear and convincing evidence, would be sufficient to establish that a reasonable trier of fact would not have found the movant guilty of the underlying offense.

You must attach the following documentation to your § 2254 motion to this court:

1. a copy of the proposed § 2254 petition you are requesting permission to file in the district court;
2. copies of all previous § 2254 petitions challenging the judgment or sentence received in any conviction for which the movant is currently incarcerated; all previous § 2241 petitions challenging the terms and conditions of the movant's imprisonment;
3. any complaint, regardless of title, that was subsequently treated by the district court as a § 2254 motion or § 2241 petition;
4. all court opinions and orders disposing of the claims advanced in (2) above;
5. all magistrate judge's reports and recommendations issued in connection with the claims advanced in (2) above.

**Do not** submit state court filings. This court does not require and will not address documents filed in a state court.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Monica R. Washington, Deputy Clerk  
504-310-7705

cc: Ms. Karen S. Mitchell